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*Patent*IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:

Gregory A. Kaepf

Serial No. 10/710,424

Group Art Unit: 3611

Filed: 07/09/2004

Examiner: Hurley, Kevin

For: AUTOMOTIVE BUMPER WITH INTEGRAL HITCH COVER

Attorney Docket No. 81105266DIV

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))

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Nicole M. Thuman
Nicole M. ThumanSECOND SUPPLEMENTAL BRIEF ON APPEALMail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

The following Second Supplement Brief on Appeal is submitted pursuant to a Notice dated April 4, 2006, in the above-identified application.

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I. Real Party in Interest

The real party in interest in this matter is Ford Global Technologies, LLC, which is a wholly owned subsidiary of Ford Motor Company both in Dearborn, Michigan (hereinafter "Ford").

II. Related Appeals and Interferences

There are no other known appeals or interferences which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

III. Status of the Claims

Claims 1-6 stand rejected in the Final Office Action.

IV. Status of Amendments

An Amendment was filed after the final rejection. The Amendment was not entered by the Examiner.

V. Summary of Claimed Subject Matter

As shown best in Figure 9 and as set forth in Applicants' specification paragraphs 7, 10, and 32, a bumper cover, 20, and an access door, 28, conceal a tubular hitch receiver, 26, mounted within a bumper assembly of an automotive vehicle. Bumper cover 20 has an aperture, 24, (Figure 6) for accessing not only an exterior portion but also an interior portion of hitch receiver 26. Access door 28 has an outer surface and an inner surface. An attaching bracket, 46, is mounted to the inner surface. Attaching bracket 46 is adapted for telescopic engagement with hitch receiver 26, and access door 28 is sized so as to engage bumper cover 20 and extend about and overlap the periphery of the bumper cover's aperture, so as to generally close the entirety of the aperture, thereby concealing the hitch receiver, while supporting the access door upon the bumper cover.

VI. Grounds of Rejection to be Reviewed on Appeal

The following issues are presented in this appeal:

Are Claims 4 and 6 properly rejected under 35 U.S.C. §102(b) as being anticipated by Smith et al?

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Are Claims 1 and 2 properly rejected under 35 U.S.C. §103(a) as being unpatentable over Smith in view of Morrison?

Are Claims 3 and 5 properly rejected under 35 U.S.C. §103(a) as being unpatentable over Smith et al in view of Randall?

VII. Argument

The Rejection of Claims 4 and 6 under 35 U.S.C. §102(b)

Claims 4 and 6 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Smith et al* (6,260,874). The Examiner states that *Smith* discloses an access door concealing a tubular hitch receiver mounted within a bumper assembly of an automotive vehicle, wherein the bumper assembly has a "bumper cover" with an aperture for accessing not only an exterior portion but also an interior portion of the hitch receiver.

Appellants respectfully submit that *Smith* discloses nothing regarding a bumper cover. Rather, *Smith* does disclose a hitch cover. As set forth in abundant detail in Appellants' specification, claims and drawings, it is clear that a bumper cover comprises a member which conceals the entirety of the bumper. In other words, the bumper cover is that part of the vehicle which covers the entirety of the bumper and which is observable to a casual observer walking around the vehicle. And, an "access door" is used to close an aperture in the bumper cover. Moreover, Appellants' definition of "bumper cover" is consistent with contemporary automotive engineering parlance. According to the lexicography of the present application, Applicants' bumper cover is a not a piece plugged into a receiver hitch. As a result, because *Smith* discloses nothing regarding the defined bumper cover, and claims 4 and 6 are allowable over *Smith* and should be passed to issue.

The Examiner has asserted that "there is no support in the specification for applicant's special definition of 'bumper cover'." In this regard the Appellants respectfully note that there is abundant explanation of this term. Anyone can perform a simple search for the term "bumper cover" in Appellants' specification. Having done so, it is easily seen that the term "bumper cover" means precisely what Appellants have asserted it means. Appellants therefore respectfully request the Board to reverse the Examiner's position with respect to Claims 4 and 6.

The Rejection of Claims 1-2 under 35 U.S.C. §103(a)

Claims 1-2 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Smith* in view of *Morrison* (6,139,044). The Examiner states that *Smith* discloses a bumper assembly having a bumper cover 50, and an aperture for accessing not only an interior portion but also an

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exterior portion of hitch receiver 42. The Examiner agrees that *Smith* fails to disclose providing an access door engaged to the receiver, but states that *Morrison* discloses a method for providing an access door for concealing a hitch receiver including providing a door having an outer decorated surface and an inner surface, with the access door having an attaching bracket mounted to the inner surface. The Examiner states that it would have been obvious at the time the invention was made to apply the method disclosed by *Morrison* to the bumper assembly disclosed by *Smith* in order to cover up and decorate the hitch receiver when not in use.

Smith '044 discloses an integrated bumper and hitch assembly in which there is a hitch protruding below the bumper. The hitch is covered by hitch cover 50. As clearly seen from Figure 2 of the '044 patent, *Smith*'s hitch cover 50 is not a bumper cover nor is it the bumper. In other words, *Smith* '044 does not have a bumper cover with an aperture for accessing a hitch receiver. The Examiner's assertion that *Smith* has a bumper cover with an aperture does not make it true.

Even assuming, for the sake of argument, that the Examiner is correct, in that *Smith* '044 discloses a bumper cover having an aperture, the "aperture" of *Smith* does not give access to external and internal portions of the hitch receiver. For this reason, too, Claims 1 and 2 are not properly rejected over the combination of *Smith* and *Morrison*, whether taken singly, or in combination with each other. Appellants accordingly request the Board to reverse the Examiner's rejection of Claims 1 and 2.

The Rejection of Claims 3 and 5 under 35 U.S.C. §103(a)

Claims 3 and 5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Smith et al* '874 in view of *Randall* (3,596,926). However, claim 3 depends from claim 1, and claim 5 depends from claim 4, which are allowable over *Smith* and certainly allowable over the combination of *Smith* and *Randall*, given that *Randall* teaches nothing more than a cover placed over a hitch. As a result, Appellants respectfully request the Board to reverse the Examiner's rejection of Claims 3 and 5.

VIII. Claims Appendix

A copy of each of the claims involved in this appeal, namely Claims 1-6 is attached as a Claims Appendix.

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IX. Evidence Appendix

None.

X. Related Proceedings

None.

XI. Comments and Conclusion

In part IV of Appellants' brief "Status of Amendments" as originally filed, it was erroneously stated that no amendment had been filed after the final rejection. What should have been stated was that an amendment was filed. Although this amendment followed along the lines of recommendations made by the Examiner during a telephone conversation, but the Examiner did not enter the Amendment. These facts were included in a Supplemental Brief which was filed on February 22, 2006. The Examiner subsequently issued the Notice of April 4, 2006, and this brief is Appellants' response.

The Examiner states at paragraph 10 of the earlier Notice of Non-Compliant Appeal Brief that "the claims in the Appendix have been copied from the above noted amendment which has not been entered. Applicants' arguments are thus directed to claims which have not been entered. The claims which were subject to final rejection were submitted with the RCE filed March 16, 2005, a copy of which is attached. The claims are significantly different in scope."

Appellants respectfully submit, however, that the claims are not significantly different in scope. In this regard, the Board's attention is directed to the amendment which was filed on July 20, 2005, wherein certain limitations were merely re-located within claims 1 and 4, the only independent claims in the case. The access door is described as overlapping and being supported by the bumper cover, in addition to the hitch receiver. These limitations were discussed with Examiner Hurley during an earlier telephone conversation. During that conversation, the Examiner seemed to agree that

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these limitations were contained within the four corners of the claims. Thus, it is surprising that the Examiner has now determined the claims to be "significantly different in scope". Appellants respectfully submit that the claim scope has no real difference, given that the limitations were already contained elsewhere in the claims. In this regard, Appellants respectfully request that this Appeal be allowed to go forward without further delay.

For all of the foregoing reasons, Appellants respectfully request that the Board direct the Examiner in charge of this examination to withdraw the rejections.

Please charge any fees required in the filing of this appeal to deposit account 06-1510.

Respectfully submitted,


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CLAIMS APPENDIX

1. A method for providing an access door for concealing a hitch receiver in a bumper assembly of an automotive vehicle; with said method comprising the steps of:

providing a bumper cover with an aperture for accessing not only an interior portion, but also an exterior portion of the hitch receiver;

providing an overlapping access door having an outer surface and an inner surface, with said access door further having an attaching bracket mounted to said inner surface, with said bracket being adapted for engagement with said hitch receiver, and with said access door being sized so as to engage with said bumper cover and extending about the periphery of said aperture, so as to generally close said aperture, thereby concealing said hitch receiver; and

installing said access door upon said vehicle by engaging said attaching bracket with said hitch receiver, and by placing the access door in contact with the bumper cover at the periphery of said aperture, such that the access door is supported not only by the hitch receiver, but also by the bumper cover.

2. A method according to Claim 1, wherein said outer surface of said access door is decorated.

3. A method according to Claim 1, wherein said access door is tethered to said bumper assembly.

4. A bumper cover and an access door concealing a tubular hitch receiver mounted within a bumper assembly of an automotive vehicle, wherein said bumper cover has an aperture for accessing not only an exterior portion but also an interior portion of the hitch receiver, with said access door having an outer surface and an inner surface, with said access door further having an attaching bracket mounted to said inner surface, with said attaching bracket being adapted for telescopic engagement with said hitch receiver, and with said access door being sized so as to engage said bumper cover and extend about and overlap the periphery of said aperture, so as to generally close the entirety of said aperture, thereby concealing said hitch receiver, while supporting the access door upon the bumper cover.

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5. An access door according to Claim 4, wherein said access door further comprises a tether having a first end attached to said access door and a second end adapted for attachment to a vehicle.

6. An access door according to Claim 4, wherein said access door further comprises at least one spring-loaded latch for engaging said attaching bracket with a hitch receiver.